

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KEVIN MOORE,

7:16-cv-04773 (KMK)

Plaintiff

v.

ANTHONY ANNUCCI, et al

Defendants.

MARCH 27, 2018

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DEFENDANT DONALD COSMAN'S ANSWER

As its Answer to the First Amended Complaint (referred to herein as "Plaintiff's Complaint"), dated November 9, 2016, filed on behalf of the Defendant **DONALD COSMAN**, individually and in his official capacity, Defendant admits, denies, and alleges as follows:

Preliminary Statement

1. Paragraph 1 of Plaintiff's Complaint does not allege any facts, and therefore no response is required.

2. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 2 of Plaintiff's Complaint and leaves Plaintiff to its proof, except to admit that Defendant had knowledge of Plaintiff being transported to Downstate Correctional Facility on November 12, 2013.

3. Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Complaint, but lacks knowledge or information sufficient to form a belief as to the truth or falsity of the injuries sustained by Plaintiff and leaves Plaintiff to its proof.

4. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 4 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

5. Defendant admits the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 6 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

7. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 7 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

8. Defendant admits the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 9 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

Jurisdiction and Venue

10. Paragraph 10 of Plaintiff's Complaint consists of legal conclusions, not factual allegations, and therefore no response is required.

11. Paragraph 11 of Plaintiff's Complaint consists of legal conclusions, not factual allegations, and therefore no response is required.

12. Paragraph 12 of Plaintiff's Complaint consists of legal conclusions, not factual allegations, and therefore no response is required.

The Parties

13. Defendant admits the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 14 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

15. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 15 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

16. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 16 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

17. Defendant admits the allegation that on November 12, 2013, Sgt. Scott was assigned to Housing Unit 1-D, and was responsible for the direct supervision of Defendant Donald Cosman. Defendant lacks knowledge or information sufficient to either admit or deny all other allegations contained in Paragraph 17 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

18. Defendant admits the allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 19 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

20. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 20 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

21. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 21 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

22. Defendant admits the allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. Defendant admits the allegations contained in Paragraph 23 of Plaintiff's Complaint.

24. Defendant admits the allegations contained in Paragraph 24 of Plaintiff's Complaint.

Statement of Facts

25. Defendant admits that Plaintiff was transferred to Downstate Correctional Facility on November 12, 2013, but lacks knowledge or information sufficient to either admit or deny the allegations as to Plaintiff's court proceedings, and leaves Plaintiff to its proof.

26. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 26 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

27. Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Complaint.

28. Defendant denies the allegation that Plaintiff was instructed to remove his belt upon entering Unit 1D, and lacks knowledge or information sufficient to either admit or deny the remaining allegations contained in Paragraph 28 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

29. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 29 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

30. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 30 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

31. Defendant admits the allegations contained in Paragraph 31 of Plaintiff's Complaint.

32. Defendant denies the allegation that Defendant stood Plaintiff up so that C.O. Santiago could "punch him cleanly", and lacks knowledge or information sufficient to either admit or deny the remaining allegations contained in Paragraph 31 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

33. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 33 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

34. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 34 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

35. Defendant admits the allegations contained in Paragraph 35 of Plaintiff's Complaint.

36. Defendant admits the allegations contained in Paragraph 36 of Plaintiff's Complaint.

37. Defendant admits the allegations contained in Paragraph 37 of Plaintiff's Complaint.

38. Defendant admits the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39. Defendant admits the allegations contained in Paragraph 39 of Plaintiff's Complaint.

40. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 40 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

41. Defendant admits the allegations contained in Paragraph 41 of Plaintiff's Complaint.

42. Defendant admits the allegations contained in Paragraph 42 of Plaintiff's Complaint.

43. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 43 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

44. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 44 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

45. Defendant admits the allegations contained in Paragraph 45 of Plaintiff's Complaint.

46. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 46 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

47. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 47 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

48. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 48 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

49. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 49 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

50. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 50 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

51. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 51 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

52. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 52 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

53. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 53 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

54. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 54 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

55. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 55 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

56. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 56 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

57. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 57 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

58. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 58 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

59. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 59 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

60. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 60 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

61. Defendant admits the allegations contained in Paragraph 61 of Plaintiff's Complaint.

62. Defendant admits the allegations contained in Paragraph 62 of Plaintiff's Complaint.

63. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 63 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

64. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 64 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

65. Defendant admits the allegations contained in Paragraph 65 of Plaintiff's Complaint.

66. Defendant admits the allegations contained in Paragraph 66 of Plaintiff's Complaint.

67. Defendant admits the allegations contained in Paragraph 67 of Plaintiff's Complaint.

68. Defendant admits the allegations contained in Paragraph 68 of Plaintiff's Complaint.

69. Defendant admits the allegations contained in Paragraph 69 of Plaintiff's Complaint.

70. Defendant admits the allegations contained in Paragraph 70 of Plaintiff's Complaint.

71. Defendant admits the allegations contained in Paragraph 71 of Plaintiff's Complaint.

72. Defendant admits the allegations contained in Paragraph 72 of Plaintiff's Complaint.

73. Defendant admits the allegations contained in Paragraph 73 of Plaintiff's Complaint.

74. Defendant admits the allegations contained in Paragraph 74 of Plaintiff's Complaint.

75. Defendant admits the allegations contained in Paragraph 75 of Plaintiff's Complaint.

76. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 76 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

77. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 77 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

78. Defendant admits to lying to NYC DOC officers, but lacks knowledge or information sufficient to form a belief as to the remaining facts alleged in Paragraph 78 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

79. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 79 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

80. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 80 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

81. Defendant admits the allegation that as a result of excessive force Plaintiff suffered physical injuries, but lacks knowledge or information sufficient to either admit or deny the remaining facts alleged in Paragraph 81 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

82. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 82 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

83. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 83 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

84. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 84 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

85. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 85 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

86. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 86 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

87. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 87 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

88. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 88 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

89. Defendant admits the allegations contained in Paragraph 89 of Plaintiff's Complaint.

90. Defendant admits the allegations contained in Paragraph 90 of Plaintiff's Complaint.

91. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 91 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

First Count: Violation of Plaintiff's Constitutional Rights by Defendants Sgt. Scott, C.O. Santiago, C.O. Cosman, C.O. Morris, C.O. Lowery, and Sgt. John Doe

92. Paragraph 92 of Plaintiff's Complaint does not consist of a factual allegation and therefore no response is required.

93. Defendant admits the allegations contained in Paragraph 93 of Plaintiff's Complaint.

94. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 94 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

95. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 95 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

96. Defendant admits the allegations contained in Paragraph 96 of Plaintiff's Complaint.

97. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 97 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

98. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 98 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

**Second Count: Violation of Plaintiff's Constitutional Rights by
Defendants Pandora Volpe and Susan Langford**

99. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 99 of Plaintiff's Complaint, and therefore no response is required.

100. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 100 of Plaintiff's Complaint, and therefore no response is required.

101. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 101 of Plaintiff's Complaint, and therefore no response is required.

102. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 102 of Plaintiff's Complaint, and therefore no response is required.

103. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 103 of Plaintiff's Complaint, and therefore no response is required.

104. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 104 of Plaintiff's Complaint, and therefore no response is required.

105. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 105 of Plaintiff's Complaint, and therefore no response is required.

106. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 106 of Plaintiff's Complaint, and therefore no response is required.

107. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 107 of Plaintiff's Complaint, and therefore no response is required.

Third Count: Violation of Plaintiff's Constitutional Rights by Dr. Malvarosa

108. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 108 of Plaintiff's Complaint, and therefore no response is required.

109. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 109 of Plaintiff's Complaint, and therefore no response is required.

110. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 110 of Plaintiff's Complaint, and therefore no response is required.

111. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 111 of Plaintiff's Complaint, and therefore no response is required.

112. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 112 of Plaintiff's Complaint, and therefore no response is required.

113. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 113 of Plaintiff's Complaint, and therefore no response is required.

114. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 114 of Plaintiff's Complaint, and therefore no response is required.

115. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 115 of Plaintiff's Complaint, and therefore no response is required.

116. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 116 of Plaintiff's Complaint, and therefore no response is required.

Fourth Count: Violation of Plaintiff's Constitutional Rights by Commissioner Annucci, Superintendent Perez, Dep. Many and Dr. Malvarosa

117. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 117 of Plaintiff's Complaint, and therefore no response is required.

118. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 118 of Plaintiff's Complaint, and therefore no response is required.

119. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 119 of Plaintiff's Complaint, and therefore no response is required.

120. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 120 of Plaintiff's Complaint, and therefore no response is required.

121. Defendant denies the allegations contained in Paragraph 121 of Plaintiff's Complaint.

122. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 122 of Plaintiff's Complaint, and therefore no response is required.

123. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 123 of Plaintiff's Complaint, and therefore no response is required.

124. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 124 of Plaintiff's Complaint, and therefore no response is required.

125. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 125 of Plaintiff's Complaint, and therefore no response is required.

126. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 126 of Plaintiff's Complaint, and therefore no response is required.

127. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 127 of Plaintiff's Complaint, and therefore no response is required.

128. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 128 of Plaintiff's Complaint, and therefore no response is required.

129. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 129 of Plaintiff's Complaint, and therefore no response is required.

130. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 130 of Plaintiff's Complaint, and therefore no response is required.

131. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 131 of Plaintiff's Complaint, and therefore no response is required.

132. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 132 of Plaintiff's Complaint, and therefore no response is required.

133. Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 133 of Plaintiff's Complaint, and therefore no response is required.

134. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 134 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

135. Plaintiff admits the allegations contained in Paragraph 135 of Plaintiff's Complaint.

136. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 136 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

137. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 137 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

138. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 138 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

139. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 139 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

140. [Marked as Plaintiff's second Paragraph 134] Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 140 of Plaintiff's Complaint, and therefore no response is required.

141. [Marked as Plaintiff's second Paragraph 135] Plaintiff makes no factual allegation as to Defendant Donald Cosman in Paragraph 135 of Plaintiff's Complaint, and therefore no response is required.

Fifth Count: Conspiracy to Cover-Up the Subject Incident by All Defendants

142. [Marked as Plaintiff's second Paragraph 136] Plaintiff makes no factual allegation in Paragraph 136, and therefore no response is required.

143. [Marked as Plaintiff's second Paragraph 137] Defendant admits the allegations contained in Paragraph 137 of Plaintiff's Complaint.

144. [Marked as Plaintiff's second Paragraph 138] Defendant admits the allegations contained in Paragraph 138 of Plaintiff's Complaint.

145. [Marked as Plaintiff's second Paragraph 139] Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 139 of Plaintiff's Complaint, and leaves Plaintiff to its proof.

146. [Marked as Plaintiff's second Paragraph 140] Defendant admits the allegations contained in Paragraph 140 of Plaintiff's Complaint.

147. [Marked as Plaintiff's second Paragraph 141] Defendant admits the allegations contained in Paragraph 141 of Plaintiff's Complaint.

148. [Marked as Plaintiff's second Paragraph 142] Defendant admits the allegations contained in Paragraph 142 of Plaintiff's Complaint.

149. [Marked as Plaintiff's second Paragraph 143] Defendant admits the allegations contained in Paragraph 143 of Plaintiff's Complaint.

Respectfully submitted,

/s/ Mark D. Sherman

Mark D. Sherman, Esq.
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CERTIFICATE OF SERVICE

This is to certify that on the 27th day of March, 2018, a copy of the foregoing Answer was filed electronically. Notice of this filing was sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Mark D. Sherman

Mark D. Sherman, Esq.